

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application.

Upon entry of the present amendment, claims 5 and 7-11 will be pending in this application. Claims 4, 6 and 12 have been cancelled herein. Claim 5 has been amended to remove diminished insight as one of the recited symptoms. Therefore, no new matter has been added.

Applicants submit that the present Amendment is merely formal in nature, presents no new issues, reduces the number of issues under consideration, and places the case in condition for allowance. Entry of the present amendment is proper to place the claims in better form for appeal.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues under 35 U.S.C. § 102(e)

The Examiner has rejected claims 4 and 6 under 35 U.S.C. § 102(e) as being anticipated by Ueda et al. U.S. Patent 6,831,103 (hereinafter referred to as Ueda '103). Claims 4 and 6 have been cancelled herein, which renders this rejection moot.

Issues under 35 U.S.C. § 103(a)

The Examiner has rejected claims 5 and 7-12 under 35 U.S.C. § 103(a) as being obvious over Ueda '103 in view of Hamilton (J. Neurol. Neurosurg Psychiat, 1960, 23, 56). Claim 12 has been cancelled herein, which renders the rejection as to this claim moot.

With respect to the remaining claims, Applicants respectfully traverse this rejection.

The present invention is directed to a method for ameliorating specific symptoms of a mood disorder comprising administering an effective amount of a composition comprising theanine to a person in need thereof, wherein said mood disorders are distinct from mood disorders associated with menstruation, as recited in claim 5.

Applicants respectfully submit that the Examiner interprets the term “anxiety” of Ueda ‘103 too broadly. However, in an effort to further prosecution, Applicants have cancelled claim 12 and deleted “diminished insight” as a symptom of claim 5. That is, the symptoms are limited to those assessed by Hamilton scales so that the claimed symptoms fall within a specific scope so as not to be interpreted too broadly.

The Examiner asserts that “depressed mood” is taught by Ueda ‘103. However, according to Hamilton scales, “depressed mood” is differentiated from “anxiety.” As shown in Table 1 of the present specification, the composition of the present invention is useful and effective for ameliorating “depressed mood,” but the composition of the present invention is not effective for ameliorating “anxiety,” appearing at items 10 and 11. As such, “anxiety” is quite different from “depressed mood,” and Ueda ‘103 does not teach a method for ameliorating “depressed mood.”

Furthermore, Ueda ‘103 refers to anxiogenic symptoms. The four symptoms recited in the amended claims are never taught in Ueda ‘103. Also, as noted above, the recited symptoms are limited to those assessed by Hamilton scales. Thus, anxiogenic symptoms are substantially excluded from the amended claims. In addition, as clarified in the data of Table 1, the symptoms for which the composition of the present invention is effective are unobvious over Ueda ‘103.

Moreover, the Examiner admits that Ueda ‘103 does not teach the different types of mood listed in claims 9-11. The Examiner attempts to overcome this deficiency by alleging that Hamilton teaches a rating scale for measuring symptoms such as feelings of guilt, suicide, and retardation: psychomotor. However, neither Ueda ‘103 nor Hamilton teaches that these specific symptoms can be treated by administering an effective amount of a composition comprising theanine.

To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (See MPEP 2143.03). As discussed above, the combination of references fails to teach or suggest all the claim limitations of independent claim 5, and those dependent thereon. Therefore, a *prima facie* case of obviousness has not been established, and withdrawal of the instant rejection is respectfully requested.

Applicants therefore respectfully submit that claims 5 and 7-11 clearly distinguish over the cited prior art.

As the above amendments and remarks address and overcome the rejections, withdrawal thereof and allowance of the claims are respectfully requested.

CONCLUSION

In summary, Applicants respectfully submit that the present claims define allowable subject matter. Therefore, the Examiner is respectfully requested to withdraw all rejections and allow the presently pending claims.

If the Examiner has any questions or comments, please contact Chad M. Rink, Reg. No. 58,258, at the offices of Birch, Stewart, Kolasch & Birch, LLP at the number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

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